

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.¹

PROMESA
Title III

No. 17 BK 3283-LTS

(Jointly Administered)

Hon. Laura Taylor Swain

**MOTION OF THE UNITED STATES TRUSTEE
FOR AMENDMENT OF THE THIRD AMENDED ORDER SETTING PROCEDURES
FOR INTERIM AND FINAL COMPENSATION AND REIMBURSEMENT
OF EXPENSES OF PROFESSIONALS (ECF NO. 20546)**

Mary Ida Townson, the United States Trustee for Region 21 (“the United States Trustee”), hereby files this Motion for Amendment of the Third Amended Order Setting Procedures for Interim and Final Compensation and Reimbursement of Expenses of Professionals [ECF No. 20546] and sets forth as follows:

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Building Authority (“PBA”) (Bankruptcy Case No. 19-BK-5523-LTS). (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

RELIEF SOUGHT²

The Puerto Rico Recovery Accuracy in Disclosures Act of 2021 (“PRRADA”) imposes the disclosure requirements that apply to professionals retained under sections 327, 1103, and 1104 of the Bankruptcy Code—namely, that a professional person publicly disclose all its connections to the debtor, creditors, and other parties involved in a bankruptcy case so that the Court, the United States Trustee, and parties in interest can determine whether the professional is disinterested and free from conflicts—on professional persons that are employed and seek payment of compensation from the estate in voluntary cases commenced under Title III of PROMESA. To begin this process, PRRADA directed the Oversight Board to establish a list of material interested parties (the “MIP List”) that professionals must review for connections to make their disclosures. PRRADA unambiguously specifies both the categories of persons and entities the Oversight Board must include on the MIP List and the sole limit the Oversight Board may apply to exclude specific persons and entities from the MIP List. The Court approved the MIP List on March 30, 2022, and on April 12, 2022, the Court entered its Third Amended Order Setting Procedures for Interim and Final Compensation and Reimbursement of Expenses of Professionals (“Third Amended Order”) [ECF No. 20546]. The Third Amended Order, among other things, set a deadline for Professionals to file PRRADA Disclosures by May 16, 2022, at 5:00 p.m. (Atlantic Standard Time) (Third Amended Order, ¶4.d.). That Order also requires the United States Trustee to review and comment informally on or object to any Professional’s PRRADA Disclosures by June 30, 2022, *or such deadline as the Court may order.* (Third Amended Order, ¶4 e.i.). (emphasis added).

² Capitalized terms used but not defined herein shall have the meanings ascribed to them below.

For the reasons set forth below, the United States Trustee requests an extension of the deadlines imposed by the Third Amended Order.

Factual Background

On May 3, 2017, the Oversight Board filed petitions to restructure the debts of the Commonwealth of Puerto Rico and several of its instrumentalities under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”), H.R. 5268 114th Cong. (2016).¹ Title III is modeled on chapter 9 of the Code and incorporates many of its provisions. 48 U.S.C. § 2161.

On January 20, 2022, the President signed PRRADA into law. Pub. L. No. 117-82. PRRADA imposes the disclosure requirements that apply to professionals retained under sections 327, 1103, and 1114 of the Bankruptcy Code to professional persons that are employed and seek payment of compensation from the estate in voluntary cases commenced under Title III of PROMESA. Under Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”) applicable to bankruptcy cases, a professional retention application must include a verified statement of an authorized representative of the professional person that discloses all connections of the professional with a wide variety of entities that will or may play a role in the chapter 11 case. The verified statement enables the court, the United States Trustee, and parties in interest to determine if the professional meets the requirements for employment under 11 U.S.C. § 327(a), specifically that it be disinterested and that it does not hold or represent an interest adverse to the estate. Sections 316 and 317 of PROMESA (48 U.S.C. §§ 2176, 2177) require the filing of interim and final fee applications by estate and official committee professionals, but, prior to PRRADA, there was no requirement that professionals under PROMESA file retention applications. As a result, there were no disclosures from the

professionals that could be reviewed to assure that the professionals were disinterested and did not suffer from disabling conflicts.

To begin the process of imposing disclosure requirements on professionals in PROMESA Title III cases, section 2(c) of PRRADA requires the Oversight Board to establish a “Material List of Interested Parties” subject to bankruptcy court approval and the rights of the United States Trustee and other parties in interest to be heard on the list. PRRADA § 2(c). Professionals seeking compensation must then review and disclose their connections against that list. Section 2(c)(2) sets forth the categories of persons and entities the Oversight Board must include on the MIP List.

On January 21, 2022, the Court entered an order directing the Oversight Board, the United States Trustee, and the Fee Examiner (the “Conferring Parties”) to meet and confer regarding PRRADA and respond in writing to various questions and issues it posed. See *Order Directing Parties to Meet and Confer Regarding the Enactment of the Puerto Rico Recovery Accuracy in Disclosures Act* [ECF No. 19859]. On January 31, 2022, the Conferring Parties filed a joint informative motion responding to these questions and describing certain other issues that could potentially arise under PRRADA. See *Joint Informative Motion of Financial Oversight and Management Board for Puerto Rico, Fee Examiner, and U.S. Trustee in Compliance with Court Order Regarding Enactment of the Puerto Rico Recovery Accuracy in Disclosures Act* [ECF No. 19964]. Thereafter, on February 2, 2022, the Court entered the PRRADA Order, directing the Oversight Board to file a motion by February 22, 2022, seeking approval of the MIP List and suggesting a dollar amount threshold for claims to be included on such list [ECF No. 19980], which the Oversight Board did [ECF No. 20194]. The Court approved the MIP List on March 30, 2022 [ECF No. 20467].

The Oversight Board and the Fee Examiner filed a Joint Motion for the Entry of an Order Further Amending Procedures for Submitting and Considering Compensation and Reimbursement of Expenses of Professionals [ECF No. 20245]. In connection with that motion, the Court entered the Third Amended Order [ECF No. 20546].

After the entry of the Third Amended Order, professionals on the MIP List began to file their PRRADA Disclosures. So far, approximately 40 professionals have filed PRRADA Disclosures or sought extensions of time to do so. Additionally, there are approximately 17 professionals on the MIP List who have not yet filed PRRADA Disclosures.

As the PRRADA Disclosures were being filed, the United States Trustee immediately undertook the process of reviewing those disclosures. As part of that process the United States Trustee informally sought supplemental disclosures and information from the parties who filed their disclosures. The United States Trustee is pleased to report that the parties have generally participated in the disclosure process on a cooperative basis. Notwithstanding the consensual manner on which the disclosure process is unfolding, the United States Trustee has determined that the review process will not be completed prior to the June 30, 2022, deadline imposed by the Third Amended Order. Also, several parties have requested extension of the deadlines from the United States Trustee to supplement their disclosures in accordance with the United States Trustee's requests. For these reasons it is clear that the United States Trustee will not complete the review process prior to the June 30, 2022, deadline and an extension of that deadline will help avoid unnecessary litigation and be necessary and beneficial to the parties and the estates.

RELIEF SOUGHT

Paragraph 4.e.i. of the Third Amended Order contemplates that the Court may modify the deadline for the United States Trustee to review and comment informally on or object to any

professional's PRRADA Disclosures. The United States Trustee requests additional time to comply with the obligations imposed by the Third Amended Order. The United States Trustee respectfully requests: (i) those parties on the MIP List as hired professionals but who have not yet filed disclosures shall have until July 15, 2022, to file the PRRADA Disclosures; (ii) that notwithstanding the terms and provisions of the Third Amended Order, the United States Trustee shall have an additional 45 days, until August 15, 2022, or such other deadline as the Court may order, to review, comment informally on or object to any professional's PRRADA disclosures; (iii) that those professionals hired after the Third Amended Order shall file PRRADA disclosures on or before July 30, 2022, or within 45 days of their hiring - whichever is later, and the United States Trustee shall have an additional 45 days, until September 15, 2022, or within 45 days of such professional filing their PRRADA disclosures - whichever is later, or such other deadline as the Court may order, to review and comment informally on or object to the PRRADA Disclosures, or to file a PRRADA Objection; and (iv) to the extent not otherwise sought herein, the U.S. Trustee may enter into a consensual extension or extensions, where reasonably necessary, from such professionals as may be determined are required to file a PRRADA Disclosure.

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CONCLUSION

Based upon the foregoing, the United States Trustee requests that the Court enter an order in the attached form *Amending the Third Amended Order Dated April 12, 2022, Setting Procedures for Interim and Final Compensation and Reimbursement of Expenses of Professionals* [ECF No. 20546], and granting such further relief as may be just and proper.

Dated: San Juan, Puerto Rico
June 22, 2022

Respectfully submitted,

MARY IDA TOWNSON
UNITED STATES TRUSTEE, Region 21

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